

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE HOLMES GROUP, INC.,	:	
Plaintiff/Counterclaim-Defendant,	:	Civil Action No. 1:05-CV-11367 WGY
	:	(Alexander, M.J.)
v.	:	
WEST BEND HOUSEWARES, LLC and	:	
FOCUS PRODUCTS GROUP, L.L.C.,	:	
Defendants/Counterclaim-Plaintiffs.	:	

**DECLARATION OF ALAN M. SACK
IN SUPPORT OF HOLMES' OPPOSITION TO WEST BEND'S
MOTION FOR SUMMARY JUDGMENT OF NON-WILLFULNESS**

I, Alan M. Sack, hereby declare the following:

1. A true copy of selected portions of the deposition transcript of Bart J. Plaumann is attached hereto as Exhibit A.
2. A true copy of selected portions of the deposition transcript of Howard Kaney is attached hereto as Exhibit B.
3. A true copy of selected portions of the deposition transcript of Michael Carpenter is attached hereto as Exhibit C.

4. Despite repeated requests, I am aware of no documents that have been produced by West Bend relating to the development of West Bend's programmable slow-cooker between the time period when the accused slow-cooker project was started in 2002 and April of 2004 when the issue was purportedly first brought to the attention of West Bend's patent attorney.

5. West Bend has produced numerous documents regarding its slow-cookers from dates even earlier than 2002 with regard to its asserted design patents. For example, West Bend has been able to produce numerous detailed development documents from 1997 with respect to another slow-cooker project with OEM relating to West Bend's asserted design patents.

6. West Bend has refused to cooperate with Holmes in its efforts to obtain testimony from OEM and its principal Mr. Hugh Mackay.

I declare under penalty of perjury that the foregoing is true and correct and, as to matters stated to be alleged on information and belief, I believe them to be true.

Executed this 22nd day of December, 2006



Alan M. Sack

EXHIBIT A

Selected Page from Plaumann Deposition

30(b)6 DEPOSITION OF THE HOLMES GROUP, NOVEMBER 16, 2006
CONFIDENTIAL - ATTORNEYS' EYES ONLY

1
2 CONFIDENTIAL - ATTORNEYS' EYES ONLY
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE DISTRICT OF MASSACHUSETTS
5 C.V. No: 05-CV-11367WGY

COPY

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7 * * * * * * * * * * * * *
8 THE HOLMES GROUP, *
9 Plaintiff, *
10 vs. *
11 WEST BEND HOUSEWARES and FOCUS *
PRODUCTS GROUP, LLC. *
12 Defendants. *
13 * * * * * * * * * * * *
14 30(b)6 DEPOSITION OF THE HOLMES GROUP,
15 a witness called on behalf of the
16 Defendants, pursuant to the Massachusetts
17 Rules of Civil Procedure, before Janet
18 Chase, a Certified Shorthand Reporter and
19 Notary Public in and for the Commonwealth of
20 Massachusetts, at the Radisson Hotel, 11
21 Beaver Street, Milford, Massachusetts, on
22 Thursday, November 16, 2006, commencing at
23 9:05 a.m.
24

30(b)6 DEPOSITION OF THE HOLMES GROUP, NOVEMBER 16, 2006
CONFIDENTIAL - ATTORNEYS' EYES ONLY

1 Q. Okay. Now, you said there was some type of
2 a relationship between OEM and Holmes?
3 A. Yes.
4 Q. And was that -- as at that time was OEM
5 supplying Holmes product?
6 A. Some of our product, yes.
7 Q. And what were they supplying?
8 A. They were supplying a griddle, a skillet and
9 at that time I think two slow cookers manual
10 slow cookers, no programmable.
11 Q. Okay.
12 A. And we were -- excuse me. We were
13 developing some the slow cookers with them.
14 Q. With OEM?
15 A. Yes.

EXHIBIT B

Selected Pages from Kaney Deposition

Howard Kaney

August 22, 2006

Confidential Attorneys' Eyes Only

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

THE HOLMES GROUP, INC.,
Plaintiff/Counter-Defendant,

-vs- Case No. 05-CV-11367 WGY
(Alexander, M.I.)

WEST BEND HOUSEWARES, LLC and
FOCUS PRODUCTS GROUP, LLC,
Defendants/Counter-Plaintiffs.

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HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

EXAMINATION OF,

HOWARD KANEY

August 23, 2006  
9:10 a.m.

100 East Wisconsin Avenue  
Milwaukee, Wisconsin

Karen L. Howell, RPR

Howard Kaney

August 22, 2006

Confidential Attorneys' Eyes Only

Page 11

1 Q. Did the types of products you were  
2 working on change during that period of time?

3 A. For a portion of that time, they  
4 did.

5 Q. What types of products were you  
6 working on that were different?

7 A. For a portion of that time I spent  
8 time with our direct sales stainless steel  
9 cookware division.

10 Q. The stainless steel cookware is  
11 generally pots and pans, nothing with heat.  
12 The heat is supplied by the oven or a stove.  
13 Is that what the cookware is?

14 A. Generally, yes.

15 Q. Now, when did you -- well, while  
16 you were working in that capacity, do you  
17 remember when you changed to the -- is that  
18 the next capacity is what you are doing right  
19 now?

20 A. Yes.

21 Q. Do you remember what year that  
22 was?

23 A. Coincident with the change in  
24 ownership to Focus Products, and I believe  
25 that was 2003.

Howard Kaney

August 22, 2006

Confidential Attorneys' Eyes Only

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1 to you, the Rival slow cooker?

2 A. I believe we had Rival slow  
3 cookers in-house.

4 Q. When you were analyzing the Rival  
5 programmable slow cooker, did West Bend have  
6 a programmable slow cooker at that time?

7 A. No.

8 Q. Was the West Bend programmable slow  
9 cooker project started -- even started at  
10 that time? Did it exist?

11 A. The concept of West Bend's  
12 programmable slow cooker initiated prior to my  
13 involvement with programmable slow cookers in  
14 general.

15 Q. Do you know who initiated that  
16 program?

17 A. I'm first aware of, I'll reference  
18 it, programmable slow cookers via a task  
19 force that was put together to investigate  
20 the possibility of developing a programmable  
21 slow cooker.

22 Q. And I believe you said you were  
23 not on that initial task force; is that  
24 correct?

25 A. I don't recall stating that I was

Howard Kaney

August 22, 2006

Confidential Attorneys' Eyes Only

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1 slow cooker?

2 A. To my recollection, there was no  
3 programmable slow cooker on the market when  
4 those discussions took place.

5 Q. When did you first become involved  
6 in the development of the West Bend  
7 programmable slow cooker?

8 A. If you mean involved as aware of  
9 the information, I worked in the product  
10 development department where my boss, Bill  
11 Dobson, sat on the slow cooker task force.  
12 And so I was aware or involved at that time  
13 to be following what the task force was  
14 doing, but I was not involved with any design  
15 responsibilities or direction as a result of  
16 that task force.

17 Q. At some point in time, did you  
18 become involved in the design responsibilities?

19 A. Yes.

20 Q. Do you recall when that would have  
21 occurred?

22 A. My recollection is it was about  
23 the time that the transition from Illinois  
24 Tool Works to Focus Products -- or excuse me,  
25 from Regal Ware to Focus Products took place.

Howard Kaney

August 22, 2006

Confidential Attorneys' Eyes Only

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1 issue regarding the packaging going out, which  
2 they took corrective actions, some  
3 miscellaneous cosmetic defects. I'm not aware  
4 of any other quality issues that interrupted  
5 production.

6 MR. HENNEBERGER: I'd like to mark  
7 as Kaney Exhibit 11 U.S. Patent No.  
8 6,573,483.

9 (Exhibit-11 was marked.)

10 BY MR. HENNEBERGER:

11 Q. Mr. Kaney, I can advise you that  
12 this is one of the patents Holmes has  
13 asserted against West Bend in this lawsuit.  
14 Are you familiar with that patent?

15 A. Yes.

16 Q. When did you first become aware of  
17 that patent?

18 A. I became familiar with it on or  
19 about the time that I had started working on  
20 this project.

21 Q. Who brought it to your attention?

22 A. I don't recall.

23 Q. Do you recall why it was brought  
24 to your attention?

25 A. I recall that we would be on the

# **EXHIBIT C**

**Selected Pages from Carpenter Deposition**

Michael Carpenter

August 22, 2006

Confidential Attorneys' Eyes Only

Page 1

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FOR THE DISTRICT OF MASSACHUSETTS

THE HOLMES GROUP, INC.,  
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-vs-

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WEST BEND HOUSEWARES, LLC and  
FOCUS PRODUCTS GROUP, L.L.C.,  
Defendants/Counter-Plaintiffs.

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HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

30(B)(6) DEPOSITION OF

MICHAEL CARPENTER

August 22, 2006
9:18 a.m.

100 East Wisconsin Avenue
Milwaukee, Wisconsin

Jane M. Jones, CRR, RMR

Michael Carpenter

August 22, 2006

Confidential Attorneys' Eyes Only

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1 businesses that were part of a group that
2 Keith ran while he was with Leggett & Platt,
3 and after he left them, they -- I believe
4 the way it went, they weren't interested in
5 consumer markets, so those two businesses were
6 bought and Focus was created.

7 Q. Did Mr. Jaffee and Mr. Wallek have
8 titles in Focus, at that time?

9 A. I'm not sure.

10 Q. They were owners of the company?

11 A. Yes.

12 Q. Were there any other owners?

13 A. I'm not sure.

14 Q. How did Focus become involved with
15 West Bend?

16 A. Focus acquired the small electric
17 piece of West Bend in, I think July of 2003.

18 Q. What do you mean by the small
19 electric piece?

20 A. Well, we didn't -- as I
21 understand, we didn't really acquire all of
22 West Bend. Regal Ware had acquired the
23 business, I think, from ITW, and they wanted
24 a cookware segment. That's what they were
25 interested in, and so we bought the small

Michael Carpenter

August 22, 2006

Confidential Attorneys' Eyes Only

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1 to the market, is that correct?

2 A. Moved forward on the development
3 first, and we still had a project to
4 complete.

5 Q. So at the time you got the
6 opinion, the project was not complete yet, is
7 that correct?

8 A. Yes.

9 Q. Did you get an additional upgrade
10 on the up-to-date opinion on the final
11 product?

12 A. I don't recall for sure. I would
13 guess we probably did, but I don't recall.

14 Q. Were there changes in the structure
15 of the product from beginning to end, or was
16 it pretty much as originally designed?

17 A. I think the objective was constant.
18 Again, on day-to-day tweaks of project
19 management, I wasn't involved in every step
20 of the way.

21 Q. I believe you said before what the
22 objective was, but could you tell me again
23 what the objective was for the product?

24 A. To put as much inside that device
25 as we could. The real objective was cosmetic.